IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.3040 OF 2006.

Raymond Limited(Textile Division)..Petitioner.
Jekegram, Thane.

Versus.

Ramashray Singh
C/o Woollen Mill Kamgar Union,
Shamrao Parulekar Bhawan,Utthalsar,
District Thane. ..Respondent.

WITH

WRIT PETITION No.3091 OF 2006.

Raymond Limited(Textile Division)..Petitioner.
Jekegram, Thane.

Vs.

Shantaram Harku Mhatre.
C/o Woollen Mill Kamgar Union,
Shamrao Parulekar Bhawan,
Utthalsar,
District Thane. Respondent.

A.K. Kale with Meena H. Doshi, Advocates for
the Petitioner.

Gayatri Singh, Advocate for the Respondents.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:21ST NOVEMBER, 2006.

ORAL JUDGMENT.

1. Since common question of law and facts arise in both the petitions, they were heard together and are being disposed of by this common judgment.

2. Heard.

3. Rule. By consent Rule is made returnable forthwith. The petitioner challenges Award Part II passed by the Labour Court and confirmed by the Revisional Court. The Labour Court had set aside the punishment of dismissal and ordered reinstatement of the respondent in the petitioner's employment with continuity of service and payment of 50% backwages during the period the employees were out of service, consequent to the said dismissal order.

4. The challenge is on the ground that the Labour Court as well as Revisional Court failed to take into consideration the fact that the punishment was imposed not only in relation to the charge of absentism without leave of the employer but also on account of misconduct of wilful disobedience and riotous or disorderly behaviour during working hours. On the other hand, the impugned Award is sought to be justified by referring to the Standing Order's Clause 22(i) and the

decisions in the matters of **Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd.and others, reported in 1984(3) S.C.C.369, Colour Chem Ltd. Vs. A.L. Alaspurkar & Ors., reported in 1998 I CLR 638 and Mohan Sugan Naik & Ors Vs. National Textile Corporation (South Maharashtra) Ltd & Ors. reported in 1994 (II) CLR 443.**

5. It is the contention on behalf of the respondents that the Labour Court had taken into consideration the nature of the misconduct on the part of the employee and had also taken into consideration the fact that the management had utterly failed to take into consideration the past record of the employee while imposing the punishment and the fact that it had also failed to produce any adverse report regarding the past conduct of the employee before the Labour Court.

6. Perusal of the impugned order of the Labour Court as well as of Revisional Court, undoubtedly, discloses that the Labour Court has taken into consideration proved misconduct in relation to charge relating to absence

without leave or permission. Another two charges related to and undisputedly established are of the nature of wilful disobedience of lawful and reasonable order of superiors and riotous or disorderly behaviour during working hours in the mill premises or commission of an act subversive of discipline. It cannot be disputed that both these charges which are stated to have been established, have not been considered by the Labour Court while arriving at a finding that the punishment imposed was shockingly disproportionate to the proved misconduct. Apparently, therefore, the Labour Court while dealing with the complaint under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 had erred in exercise its jurisdiction in relation to the scope of interference in the punishment imposed by the management on the basis of proved misconduct, The finding about unfair labour practice having been adopted by the employer could not have been arrived at unless the Labour Court had taken into consideration all the charges which have been established against the employee. Once it is apparent

from the plain reading of the impugned order that the Labour Court had failed to take into consideration the said two charges established against the employee and without consideration thereof having been held that the punishment imposed was shockingly disproportionate to the proved charges, the impugned order cannot be sustained,hence is liable to be set aside on that ground alone. In that regard, none of the judgments sought to be relied upon are of any help to the respondent; rather the decision of the Apex Court in Colour-Chem Ltd.'s case clearly justifies interference by this Court in writ jurisdiction to set aside the impugned order and remand the matter to the Labour Court to reconsider the point regarding the allegation of unfair labour practice including the point relating to proportionality of the punishment with reference to the proved misconduct.

7. The learned Advocate appearing for the respondent drawing attention to the Standing Orders, has sought to contend about need for consideration of the past record while imposing the punishment and while dealing with

the issue regarding the proportionality of the punishment with reference to the proved misconduct, is necessary to be taken into consideration. It is not necessary to deal with the said issue. It is well settled and reiterated by the Apex Court in Sudhir Chandra Sarkar's case that the Certified Standing Orders partake the colour of statutory provisions binding upon the parties in relation to the service conditions of the employees. Undoubtedly, the employer, while dealing with the issue of punishment to be imposed on account of proved misconduct, has to take into consideration the Standing Orders and in that regard the Labour Court has also to bear in mind those Standing Orders while dealing with the said issue. It is true that the impugned order nowhere discloses any reference to any Standing Orders. Liberty to the parties to draw the attention of the Labour Court to the Certified Standing Orders applicable to the parties while dealing with the said issue.

8. It is made clear that this Court has not expressed any opinion regarding sufficiency or

insufficiency of the punishment imposed by the employer or the same being either proportionate or disproportionate to the proved misconduct. Since the impugned order is being set aside and the matter is being remanded, the parties are at liberty to place all the materials before the Labour Court and the Labour Court to deal with the same in accordance with the law.

9. In the result,therefore,the impugned Award part II is set aside. The matter is remanded to the Labour Court to deal with the issue regarding unfair labour practice including the point relating to the proportionality of the punishment. Since the matter relates to the year 1991, the Labour Court shall dispose of the matter, as expeditiously as possible, and in any case, shall dispose of the same on or before 30th June, 2007 and file compliance report in this Court in the first fortnight of July, 2007. Rule is made absolute in above terms with no order as to costs.

[R.M.S.KHANDEPARKAR,J]